THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 11.11.2010
Judgment Pronounced on: 23.11.2010

+ IA No. 7398/2009 in CS(OS) No.826/2004

Y.S. MANCHANDA .....Plaintiff

- versus -

NAND SINGH & ORS .....Defendants

Advocates who appeared in this case:
For the Plaintiff: Mr. S.C. Nigam, Advocate.

For the Defendant: Mr. Ravinder Sethi, Sr. Advocate with Mr. Puneet Sharma and Mr. Rajeev Kumar, Advocates for defendants No.2 to 5.

CORAM:-
HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

V.K. JAIN, J

1. This is an application for recalling the compromise order dated 5th October, 2005 passed on an application under Order 23 Rule 1 of CPC read with Section 151 thereof being IA No.8006/2005.

2. Under the settlement, the Agreement to Sell dated

17th December, 2002 which the defendants had executed in favour of the plaintiff stood cancelled subject to the defendants paying an amount of Rs.30 lacs to the plaintiff. Since a sum of Rs.8 lacs had already been paid to the plaintiff, five cheques for a total amount of Rs.22 lacs were handed over to the plaintiff in Court on that date. The suit was dismissed as withdrawn subject to the cheques given to the plaintiff being honoured.

3. It has been alleged in the application that during the pendency of this suit, the vendors had been threatening and coercing the plaintiff who then was 69 years old and was otherwise ill, by threatening that they wanted the property for their own use and will never part with the same and thereby prevailed upon the plaintiff to call off the agreement and compromise the suit. It has also been alleged in para 12 of the application that the vendors had applied pressure and threat of criminal prosecution by filing fabricated documents on the Court file purporting to be transcript of some taped incriminating conversation with the plaintiff. It has also been alleged that the defendants sold the property within five months of obtaining the compromise order by executing four separate sale deeds in

respect of four portions of the building, for a total sale consideration of Rs.1,55,00,000/- as against the consideration of Rs.3,07,00,000/- which the plaintiff had agreed to pay to them and thereby they have caused loss of revenue to the Government in the form of stamp duty and income tax by taking a few crores of rupees over and above the agreed sale consideration. The plaintiff has sought annulment of the sales effected by the vendors in favour of respondents No.6 and 7 and has also sought conveyance of the property to him against the agreed sale consideration of Rs.3,07,00,000/- along with physical possession of the property. It has been further prayed that if the Court is of the opinion that directing sale of the property to the plaintiff is not possible, in that case he may be awarded compensation amounting to Rs.1,73,55,000/- along with interest thereon at the rate of 8% per annum.

4. The application has been opposed by defendants No.2 to 5. It has been pointed out in the reply that the plaintiff had failed to obtain an interim injunction from this Court and realizing the futility of pursuing a false and frivolous litigation, he had entered into a compromise out of his own free will on return of the sum of Rs.30 lacs which

he had furnished as security money and which the defendants were otherwise entitled to forfeit in terms of the agreement. It has also been stated in the reply that a compromise order can be recalled only for the reason of a fraud being practiced on the Court and not on account of fraud having been practised by one party on the other. It has been pointed out that the applicant has failed to specific how and in what manner he was threatened and coerced into compromising the suit. The respondents/defendants No.2 to 5 have also denied the alleged threat or coercion. According to the respondents, the applicant, after receiving a sum of Rs.30 lacs under the compromise, has turned dishonest and filed this application at a belated stage with a mala fide intention of drawing an unfair advantage over the answering defendants. It has also been stated in the reply that the applicant who is a builder is in the habit of filing such false and frivolous litigation against unsuspecting people with an intention of pressurizing them to submit to his illegal and mala fide demands. The contesting defendants have denied having intimidated the plaintiff/applicant with initiation of criminal prosecution by filing fabricated documents. It has also been stated in the

reply that the plaintiff/applicant, prior to institution of the suit had resorted to threatening the answering defendants and the conversation which took place between the parties on 12th March, 2006 was recorded by them with a view to expose the plaintiff/applicant.

5. Order 23 Rule 3A of the Code of Civil Procedure provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The Explanation to Rule 3 of Order 23 of the Code provides that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of that Rule. It would be pertinent to note here that Rule 3 provides for passing of a decree by the Court where it is specified that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties. Therefore, the agreement or compromise between the parties to a suit needs to be lawful before it can be accepted by the Court and a decree can be passed in terms thereof. In view of the Explanation referred above, if an agreement is either void or voidable, it shall not be a lawful agreement. Therefore, the Court cannot pass a

compromise decree on the basis of an agreement or compromise which is either void or voidable. In view of the provisions of Rule 3A, if a decree is sought to be challenged on the ground that the compromise on which it was based was void or voidable and, therefore, was not lawful, no suit can be filed for setting aside such a decree. As a necessary corollary, the only remedy available to a party who seeks to challenge a decree on the ground that the compromise on which it was based was void or voidable and therefore, unlawful, is to go back to the Court which had passed the decree on the basis of such a compromise. In view of the provisions of Rule 3A of Order 23 when read with the Explanation to Rule 3, there is no scope for an interpretation that a compromise decree which is voidable and not void can be challenged by filing a separate suit.

6. The question whether a compromise decree obtained by playing fraud upon a party to the suit came up for consideration before the Supreme Court in **Pushpa Devi Bhagat (D) through LR Smt. Sadhan Rai** Vs. **Rajinder Singh and others** JT 2006 (6) SC 235. The Supreme Court held that no independent suit can be filed for setting aside compromise decree on the ground that the compromise was

not lawful in view of the bar contained in Order XXIII of Code of Civil Procedure and the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. It was further held that in that event the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not.

7. On the other hand, in the case of **Dadu Dayal Mahasabha** Vs. **Sukhdev Arya and Anr.**; (1990) Supreme Court Cases 189, the Court held that if a party makes an application before the court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to investigate the matter and to set aside the decree if it is satisfied that the consent as a fact was lacking and the court was induced to pass the decree on a fraudulent representation made to it that the party had actually consented to it. The Supreme Court further held that if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent has been procured by fraud, the court

cannot investigate the matter in the exercise of its inherent power and the only remedy to the party is to institute a suit.

8. In **Banwari Lal** Vs. **Smt. Chando Devi (through L.R.) and another**; AIR 1993 SC 1139, the Supreme Court, inter alia, held as under:-

> "On 3rd April, an application was filed on behalf of the plaintiff-appellant in the said suit that he had engaged Shri Soran Ram, Advocate, Karnal, to appear on his behalf, who had told the appellant that the date fixed for the hearing of the suit was 5.3.1991. When the appellant went to him on 5.3.1991 the counsel informed him that the case had been adjourned to 2.4.1991. On 2.4.1991 the appellant learned from the cause list that the case was not on the cause list. Then he approached his counsel aforesaid Shri Soran Ram along with Shri I.D. Swamy, a retired IAS Officer. His counsel informed him that the suit has been dismissed as withdrawn. The appellant got the records of the case inspected which revealed that Shri Soran Ram, Advocate of the appellant, in collusion with defendant No.2 of the said suit had played a fraud on the appellant by filing a fabricated petition of compromise although no compromise had been effected between the appellant and the respondent. Further details of fraud were mentioned in the said petition and it was stated that as the alleged compromise itself was void, illegal and against the requirement of Rule 3 of Order 23 of the CPC (hereinafter referred to as "the Code"), the order recording such compromise be recalled and suit be restored and be heard on merit. About his counsel aforesaid Shri Soran Ram, it was said that the appellant had learned that he had cheated several persons and because of that a case had been registered against him.

9. In **Gram Panchayat of Village Naulakha** Vs. **Ujagar Singh & Ors**; IV (2000) CLT 242 (SC), the Supreme Court referring to the provisions of Section 44 of Indian Evidence Act which provides that any party to a suit or proceedings may show that any judgment or order or decree which is relevant under Sections 40,41, 42 and which has been delivered by a Court not competent to deliver it or was obtained by fraud or collusion, was of the view that it is not necessary to file an independent suit to raise such a contention. It was observed that in order to contend in a latter suit or proceedings that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit.

10. In **S.P. Chengalvaraya Naidu (dead) by L.R.s** Vs. **Jagannath (dead) by L.Rs. and others**; AIR 1994 Supreme Court 853,

> "Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to fie the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the

> appellants came to know about the release deed and, as such, they challenged the application on the ground that non-disclosure on the part o9f Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity."

It was held that a litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

11. In **United India Insurance Co.Ltd.** Vs. **Rajendra Singh & Ors., Etc.**; II (2000) CLT 25 (SC), Supreme Court observed that the remedy to move for recalling the order on the basis of newly discovered facts amounting to fraud or high degree cannot be foreclosed. It was also observed that no Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was obtained through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

12. In **A.V. Papayya Sastry and Others** Vs. **Govt. of A.P. and others**; (2007) 4 Supreme Court Cases 221,

Supreme Court observed that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. It was held that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eyes of law and can be challenged in any Court at any time, in appeal, revision, writ or even in collateral proceedings.

13. The learned counsel for the defendants No.2 to 5 has referred to the decisions of this Court in **Uri Civil Contractor AB** Vs. **Mrs. Pampa Mukherjee**; 56 (1994) Delhi Law Times 608 and **Tara Chand Jain** Vs. **Saroj Gupta**; 130 (2006) Delhi Law Times 617. In the case of **Uri Civil Contractor AB (supra)**, this Court was of the view that in the case of fraud practised by one party on the other, the party cannot approach the Court under Section 151 of CPC for setting aside the compromise decree on the basis of fraud and the only course open to the said party would be to file a suit for declaration for getting the said decree declared as null and void. It was further held that in case of fraud practised on the Court, the Court would be fully competent to investigate the said fraud and set aside the said decred on an application under Section 151 of CPC moved by a

party, if it comes to the conclusion that it would be a case of fraud practised on the Court. A similar view was taken in the case of **Tara Chand Jain (supra).**

14. The learned counsel for the defendants has also referred to the decision of the Andhra Pradesh High Court in **Smt. Anita** Vs. **R. Rambilas** (exact citation not given), where it was held that if the evidence on record discloses that one party has played fraud on the other party at any stage, the only remedy left over to the party against whom the fraud is played is to file a separate suit for setting aside the decree obtained by fraud whereas if it is proved that one of the parties had played fraud on the Court, then only a review petition is maintainable under Section 151 of CPC. However, in view of the authoritative pronouncement of Supreme Court in the case of **Pushpa Devi Bhagat's** case **(supra)** and the specific provisions contained in Order 23 Rule 3A of the Code of Civil Procedure read with the Explanation to Rule 3 thereof, there is no escape from concluding that irrespective of whether a fraud is played upon the Court or by one party to the litigation on the other, no independent suit lies for setting aside the compromise decree on the ground that the compromise on which the

decree was based was unlawful. Such a decree can be challenged before a Court which passed the decree based on compromise by filing appropriate application under Section 151 of CPC.

15. Coming to the merits of this application, the case of the applicant is based upon coercion though the heading of the application refers to deception and misrepresentation. In the application, there is no allegation of fraud or deception either on the Court or on the applicant. Similarly, there is no allegation of any misrepresentation either to the Court or to the applicant. Order VI Rule 4 of CPC provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and any of other cases in which particulars may be necessary beyond such as are exemplified in the aforesaid forms, particulars shall be stated in the pleadings.

16. In **Ranganayakamma and another** Vs. **K.S. Prakash (dead) by LRs. and others**; (2008) 15 Supreme Court Cases 673, the Supreme Court referring to the provisions contained in Order VI Rule 4 of the CPC held that when a fraud is alleged, the particulars thereof are required to be pleaded. It was observed that when a contract is said

to be voidable by reason of any coercion, misrepresentation or fraud, the particulars thereof are required to be pleaded.

17. In **Ramesh B. Desai** Vs. **Bipin Vadilal Mehta**; (2006) 5 SCC 638, Supreme Court observed that Order VI Rule 4 of CPC requires that complete particulars of fraud shall be stated in the pleadings. A similar view was taken in **Sangramsinh P. Gaekwad** Vs. **Shantadevi P. Gaekwad**; (2005) 11 scc 314.

18. Coercion is defined in Section 15 of the Indian Contract Act as committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property to the prejudice to any person whatever, with the intention of causing any person to enter into an agreement. The definition of `coercion' contained in Section 15 of the Indian Contract Act is intended solely for the purpose of considering whether the consent in a given case was a free consent falling within Section 14 thereof. The expression "any act forbidden by the Indian Penal Code" obviously refers to acts which amount to an offence under the Indian Penal Code. To threaten another person with criminal prosecution is not per se forbidden by Indian Penal Code.

Such an act is forbidden only when it amounts to a false charge. If a person is threatened with criminal prosecution and fearing the result of prosecution he enters into an agreement with the person threatening him with prosecution, it cannot be said that the consent of the person threatened with prosecution was obtained by coercion. If, however, the threat given is of false prosecution or forging or fabricating evidence, that would amount to coercion being an act forbidden by the Indian Penal Code.

19. When coercion is alleged, the allegation like fraud or misrepresentation must be supported by particulars. It is only after complete particulars of the alleged coercion are given that the Court can inquire into it and decide whether it stands proved or not.

20. In the case before this Court, the allegations of what could constitute coercion are contained in paragraphs 8 and 12 of the application. In paragraph 8 it is alleged that the vendors had been threatening and coercing the plaintiff during pendency of the suit and they prevailed upon him to call off the agreement and compromise the suit. No particulars of the alleged threat or coercion has been given in this paragraph of the application. It does not disclose

when the plaintiff/applicant was threatened, by whom the threat was given and what was the place at which the plaintiff/applicant was threatened. It does not disclose what was the mode of the alleged threat and coercion and what exactly was the threat given or coercion applied on the plaintiff/applicant. In any case, if the defendants told the plaintiff that they required the property for their use and will not part with it, it does not amount to `coercion' as defined in Section 15 of the Contract Act. The allegations made in paragraph 8 of the application do not meet the requirement of Order VI Rule 4 of CPC and, therefore, are liable to be rejected on this ground alone.

21. It has been alleged in paragraph 12 of the application that the vendors had applied pressure and threat of criminal prosecution by filing fabricated document on the Court file, purporting to be the transcript of some taped incriminating conversation with him. The application does not disclose when and where the conversation, if any, took place between the parties. It does not disclose what exactly was contained in the transcript which is alleged to have been used to threaten the plaintiff/applicant and where, when and by whom the alleged fabricated taped

conversation was played to the plaintiff/applicant or its transcript was given to him. The plaintiff/applicant does not claim to have been supplied with any transcript of the alleged taped conversation. No such transcript has been placed on record by him. The application does not indicate what was contained in the alleged fabricated transcript of the taped conversation. The case of the contesting defendants is that the conversation which took place between them, the plaintiff and one Smt. Khanna (a broker) on 16.3.2006 was recorded by them in order to expose the threat given to them by the plaintiff prior to institution of the suit. This averment made by the defendants No.2 to 5 in paragraph 12 of their reply has not been controverted in paragraph 12 of the rejoinder by the plaintiff/applicant. While filing the rejoinder, the plaintiff/applicant did not claim that the alleged fabricated transcript pertained to a conversation prior to the date 5th October, 2005 when the compromise order was passed by this Court. If the transcript pertains to a conversation which took place after 5th October, 2005, it cannot be said that the plaintiff/applicant was coerced into entering into a compromise recorded on 5th October, 2005, using a

fabricated transcript of his conversation with the vendors/defendants. Thus, even the allegations made in paragraph 12 of the application do not meet the requirement of Order VI Rule 4 of CPC.

22. A perusal of IA No.8006/2005 filed under Order 23 Rule 1 of CPC would show that it is signed not only by the plaintiff but also by his counsel, Shri S.C. Nigam who continues to represent him even in these proceedings. The application was also supported by an affidavit of the plaintiff/applicant which was sworn before an Oath Commissioner and at the time of attestation of his affidavit, the plaintiff/applicant was identified by his present counsel, Shri S.C. Nigam.

23. A perusal of the order passed by this Court on 5th October, 2005, would also show that Shri S.C.Nigam, counsel for the plaintiff was present in the Court when this order was passed. This is not the case of the plaintiff that Mr. Nigam was not acting on instructions from him. He has not disputed either his signature on the application or the affidavit sworn by him. The cheques which were given to the plaintiff in the Court on 5th October, 2005 have admittedly been got encashed by him. If the

plaintiff/applicant was coerced into compromising with the defendants, nothing prevented him from not encashing these cheques. There is no explanation from the plaintiff/applicant as to why he chose to encash five cheques for a total sum of Rs.22 lacs, in case he had not given a free consent to the compromise with the defendants/vendors.

24. The compromise order was passed on 5th October, 2005, whereas this application has been filed on 18th May, 2009, i.e., after more than 3 ½ years of the compromise order being passed by the Court. There is no explanation from the plaintiff/applicant as to why he waited for more than 3 ½ years to come to the Court to complain of the alleged coercion seeking annulment of the compromise order.

25. In **Shanti Budhiya Vesta Patel and Others** Vs. **Nirmala Jayprakash Tiwari and Others**; (2010) 5 Supreme Court Cases 104, the Supreme Court held that the burden to prove that a compromise arrived at under Order 23 Rule 3 of CPC was tainted by coercion or fraud lies upon the party who alleges the same and in order to make out a case of fraud or coercion there must be (a) an express allegation

of coercion or fraud and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. The application does not meet these requirements of law and, therefore, needs to be rejected.

26. In these circumstances, there is no escape from the conclusion that there was no coercion applied upon the plaintiff/applicant and that he wants to go back on his compromise with the defendants No.2 to 5, presumably on account of the value of the property having substantially gone up between the date on which the compromise order was passed and the date on which he has filed this application. The application is nothing but a gross abuse of the process of the Court and is hereby dismissed with costs assessed at Rs.20,000/-.

(V.K. JAIN)
JUDGE

NOVEMBER 23, 2010
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